

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2140
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to amend and reenact section 57-35.3-12, subsection 9 of section 57-38-38, and sections 57-38.1-01 and 57-38.1-02 of the North Dakota Century Code, relating to provisions of the corporate income tax applicable to the financial institutions tax, the time period for the assessment of additional income tax, the definition of financial organization for purposes of the Uniform Division of Income for Tax Purposes Act, and applicability of the Uniform Division of Income for Tax Purposes Act; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-35.3-12 of the North Dakota Century Code is amended and reenacted as follows:

57-35.3-12. Applicable provisions of chapter 57-38 relating to administration, interest, and penalties. The provisions of subsection 9 of section 57-38-14, section 57-38-33, subsection 1 of section 57-38-34, sections 57-38-34.4, 57-38-35.1, 57-38-35.2, 57-38-37, 57-38-38, 57-38-39, 57-38-40, 57-38-44, 57-38-45, 57-38-46, 57-38-47, 57-38-48, 57-38-49, 57-38-50, 57-38-51, 57-38-53, 57-38-54, 57-38-56, and 57-38-57, insofar as consistent therewith, govern the administration of sections 57-35.3-01 through 57-35.3-12. For this purpose, the term "corporation", as used in the sections listed in this section, includes a financial institution.

SECTION 2. AMENDMENT. Subsection 9 of section 57-38-38 of the North Dakota Century Code is amended and reenacted as follows:

9. Except for an amended return required to be filed under section 57-38-34.4, if a person files an amended state income tax return within the time periods prescribed in subsections 1, 2, and 3 or ~~subsection~~ subsections 1 and 2 of section 57-38-40, the tax commissioner has two years after the amended state income tax return is filed to audit the state income tax return and assess any additional state income tax attributable to the changes or corrections on the amended return, even though other time periods prescribed in this section for the assessment of tax may have expired. The provisions of this subsection do not limit or restrict any other time period prescribed in this section for the assessment of tax that has not expired at the end of the two-year period prescribed in this subsection.

SECTION 3. AMENDMENT. Section 57-38.1-01 of the North Dakota Century Code is amended and reenacted as follows:

57-38.1-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.
2. "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.
3. "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

4. ~~"Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, investment company, or any type of insurance company.~~
5. "Nonbusiness income" means all income other than business income.
6. 5. "Public utility" means any business entity which owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, oil, oil products, or gas.
7. 6. "Sales" means all gross receipts of the taxpayer not allocated under sections 57-38.1-04 through 57-38.1-08.
8. 7. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

SECTION 4. AMENDMENT. Section 57-38.1-02 of the North Dakota Century Code is amended and reenacted as follows:

57-38.1-02. Taxpayers - Applicability. Any taxpayer having income from business activity which is taxable both within and without this state, including a public utility, ~~but other than activity as a financial organization or the rendering of purely personal service by an individual,~~ shall allocate and apportion the taxpayer's net income as provided in this chapter.

SECTION 5. EFFECTIVE DATE. Section 2 of this Act is effective for amended returns filed after December 31, 2004.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2140.

Senate Vote: Yeas 44 Nays 0 Absent 3

House Vote: Yeas 90 Nays 0 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,
at _____ o'clock _____ M.

Secretary of State